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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,276	12/16/2003	Antje Wenzel	DT-6702	6180
30377	7590	08/22/2008		
DAVID TOREN, ESQ. ABELMAN FRAYNE & SCHWAB 666 THIRD AVENUE NEW YORK, NY 10017-5621			EXAMINER HENDRICKSON, STUART L	
			ART UNIT	PAPER NUMBER
			1793	
			MAIL DATE	DELIVERY MODE
			08/22/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/737,276

Applicant(s)

WENZEL ET AL.

Examiner

Stuart Hendrickson

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1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/14/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 32-43 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support for 'formiate' in the specification. In addition, the change from 'expandable' to 'intumescent' appears to be new matter, and no support was indicated for the change.

Claims 32-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term 'formiate' is unclear.

Claims 32-43 are rejected under 103(a) as obvious over Ou et al. '842 in view of 3325340. Ou '842 teaches in the examples (esp ex. 1) treating vermiculite ore with lithium citrate in water for 24 hours, washing and drying. Ou only differs in not exemplifying the claimed process; the examples in toto teach all the pieces. The ore is deemed to meet the claimed size- note the use of 70 mesh (.210 mm) and Walker col. 3 lines 20-35; using the ore of Walker in the process of Ou is an obvious expedient to provide the required vermiculite. The amount of material (claims

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35, 36) is suggested in col. 3. Thus, no difference is seen in the product. The recitation of intended use does not limit the product, and no differences are seen due to the similarity of the process steps. Process limitations (claims 38-43) do not distinguish the product. Ou col. 5 suggests drying the materials upon final use.

Applicant's arguments filed 5/14/08 have been fully considered but they are not persuasive. Previous arguments apply and are incorporated herein. It is not seen why Ou fails to teach layered silicate when vermiculite is explicitly enumerated by the claims and reference. Once applicant finishes their treatment, no difference in the expandability of their vermiculite is seen—especially since the time of treatment (claim 39) is longer than that of the reference. The changes in claim language appear to broaden the claims; if some subtle meaning was intended, this needs to be explained. Argument to intended use is not relevant. Onset temperature is not claimed.

The references cited in the specification should be submitted. The specification should not contain non-initialled changes. It should be checked for compliance with both of these requirements.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (571) 272-1351.

/Stuart Hendrickson/
examiner Art Unit 1793